

House File 638 - Introduced

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BY WHEELER and WILLS

A BILL FOR

- 1 An Act relating to the production and sale of food on the
- 2 premises of a residence or farmers market, and making
- 3 penalties applicable.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 10A.104, subsection 11, Code 2021, is
2 amended to read as follows:

3 11. Administer inspections and licensing of hotels and home
4 ~~bakeries~~ food establishments.

5 Sec. 2. Section 137D.1, Code 2021, is amended to read as
6 follows:

7 **137D.1 Definitions.**

8 As used in ~~this chapter~~ unless the context otherwise
9 requires:

10 1. ~~"Food" means any raw, cooked, or processed edible~~
11 ~~substance, ice, beverage, or ingredient used or intended~~
12 ~~for use or sale in whole or in part for human consumption~~
13 "Delivered" means transferred to the consumer, either
14 immediately upon sale or at a time thereafter.

15 2. "Department" means the department of inspections and
16 appeals.

17 3. ~~"Home bakery" "Home food establishment" means a business~~
18 ~~on the premises of a residence in which prepared homemade~~
19 ~~food is created for sale or resale, for consumption off the~~
20 ~~premises, if the business has gross annual sales of prepared~~
21 ~~food of less than thirty-five thousand dollars. However, "home~~
22 ~~bakery" does not include a residence in which food is prepared~~
23 ~~to be used or sold by churches, fraternal societies, charitable~~
24 ~~organizations, or civic organizations~~ items are prepared for
25 sale under this chapter.

26 4. ~~"Prepared food" "Homemade food item" means soft pies,~~
27 ~~bakery products with a custard or cream filling, or baked~~
28 ~~goods that are a time/temperature control for safety food.~~
29 ~~"Prepared food" does not include baked goods that are not a~~
30 ~~time/temperature control for safety food, including but not~~
31 ~~limited to breads, fruit pies, cakes, or other pastries that~~
32 ~~are not a time/temperature control for safety food~~ a food item,
33 including a nonalcoholic beverage, which is produced and, if
34 packaged, packaged at a home food establishment.

35 5. ~~"Time/temperature control for safety food" means a~~

~~1 food that requires time and temperature controls for safety~~
~~2 to limit pathogenic microorganism growth or toxin formation~~
3 "Nonpotentially hazardous" means food that does not require
4 time/temperature control for safety to limit pathogenic
5 organism growth or toxin formation.

6 6. "Potentially hazardous" means food that requires
7 time/temperature control for safety to limit pathogenic
8 organism growth or toxin formation.

9 7. "Produce" means to prepare a food item by cooking,
10 baking, drying, mixing, cutting, fermenting, preserving,
11 dehydrating, growing, raising, or other process.

12 8. "Producer" means a person who produces a homemade food
13 item in a home food establishment.

14 9. "Seller" means a person who sells a homemade food item
15 to a consumer.

16 Sec. 3. Section 137D.2, Code 2021, is amended by striking
17 the section and inserting in lieu thereof the following:

18 **137D.2 Home food establishments — exemptions.**

19 1. A home food establishment may produce a homemade
20 food item without complying with any licensing, permitting,
21 inspection, packaging, or labeling laws of the state or a
22 political subdivision of the state, provided that the home food
23 establishment meets all of the following requirements:

24 a. (1) For a nonpotentially hazardous homemade food item,
25 the homemade food item is sold and delivered by the seller to
26 the consumer, whether in person or remotely.

27 (2) For a potentially hazardous homemade food item, the
28 homemade food item is sold by the producer to the consumer,
29 either in person or remotely, and delivered by the producer to
30 the consumer in person.

31 b. The following information is provided to the consumer as
32 provided in paragraph "c":

33 (1) The name, home or post office box address, and telephone
34 number of the home food establishment that produced the
35 homemade food item.

1 (2) The common or usual name of the homemade food item.

2 (3) The ingredients of the homemade food item in descending
3 order of predominance.

4 (4) The following statement:

5 This product was produced by a home food establishment that is
6 exempt from state licensing laws and inspection. This product
7 may contain allergens.

8 c. The information required by paragraph "b" shall be
9 provided in one of the following manners:

10 (1) On a label affixed to the package, if the homemade food
11 item is packaged.

12 (2) On a label affixed to the container, if the homemade
13 food item is offered for sale from a bulk container.

14 (3) On a placard displayed at the point of sale, if the
15 homemade food item is neither packaged nor offered for sale
16 from a bulk container.

17 (4) On the internet site on which the homemade food item is
18 offered for sale, if the homemade food item is offered for sale
19 on the internet.

20 (5) Orally, if the homemade food item is sold by telephone
21 or custom order, provided that the information shall also be
22 made readily available to the consumer upon delivery.

23 d. The homemade food item must not be meat, meat byproduct,
24 meat food product, poultry, poultry byproduct, or poultry
25 food product as those terms are defined in the federal Meat
26 Inspection Act, as amended, 21 U.S.C. §601 et seq., or the
27 federal Poultry Products Inspection Act, as amended, 21 U.S.C.
28 §451 et seq., unless the production and sale of the item is
29 within an exemption in 9 C.F.R. §303.1(d), §381.10(c), or
30 §381.10(d), and the home food establishment complies with other
31 applicable federal regulations.

32 2. This section does not exempt a home food establishment
33 from a requirement to register a producer or seller's name,
34 address, and other identification with the state.

35 Sec. 4. Section 137D.3, Code 2021, is amended to read as

1 follows:

2 **137D.3 Penalty.**

3 A person who violates a provision of **this chapter**, including
4 a standard adopted by departmental rule, relating to home
5 ~~bakeries food establishments or prepared foods created produced~~
6 in a home ~~bakery food establishment~~, is guilty of a simple
7 misdemeanor. Each day that the violation continues constitutes
8 a separate offense.

9 Sec. 5. Section 137D.4, Code 2021, is amended to read as
10 follows:

11 **137D.4 Injunction.**

12 A person operating a home ~~bakery or selling prepared foods~~
13 ~~created at a home bakery food establishment~~ in violation of
14 a provision of **this chapter** may be restrained by injunction
15 from further operating that home ~~bakery food establishment~~.
16 If an imminent health hazard exists, the home ~~bakery food~~
17 ~~establishment~~ must cease operation. Operation shall not be
18 resumed until authorized by the department.

19 Sec. 6. Section 137D.6, Code 2021, is amended to read as
20 follows:

21 **137D.6 Conflicts with state building code.**

22 Provisions of **this chapter**, including standards for home
23 ~~bakeries food establishments~~ adopted by the department, in
24 conflict with the state building code, as adopted pursuant
25 to **section 103A.7**, shall not apply where the state building
26 code has been adopted or when the state building code applies
27 throughout the state.

28 Sec. 7. Section 137F.1, subsection 8, paragraphs b, c, d,
29 and e, Code 2021, are amended to read as follows:

30 **b.** An establishment that is not a home food establishment as
31 defined in section 137D.1 that offers only prepackaged foods
32 that are not time/temperature control for safety foods.

33 **c.** A produce stand or facility which sells only whole, uncut
34 fresh fruits and vegetables or homemade food items produced by
35 a home food establishment pursuant to chapter 137D.

1 *d.* Premises which are a home ~~bakery~~ food establishment as
2 defined in section 137D.1 pursuant to chapter 137D.

3 *e.* Premises where a person operates a farmers market, ~~if~~
4 ~~time/temperature control for safety foods are not sold or~~
5 ~~distributed from the premises.~~

6 Sec. 8. Section 137F.1, subsection 8, paragraph f, Code
7 2021, is amended by striking the paragraph.

8 Sec. 9. REPEAL. Section 137D.8, Code 2021, is repealed.

9 EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
11 the explanation's substance by the members of the general assembly.

12 This bill relates to the production of food on the premises
13 of a residence. The bill replaces the term "home bakery"
14 with "home food establishment". The bill authorizes a home
15 food establishment to sell homemade food items, as defined in
16 the bill, without complying with any licensing or inspection
17 requirements, provided that the home food establishment meets
18 certain requirements regarding the sale, labeling, and delivery
19 of the homemade food item. The bill prohibits a home food
20 establishment from selling certain meat and poultry products
21 enumerated in federal law unless the product falls under an
22 exception enumerated in federal rules. The bill does not
23 exempt a home food establishment from a requirement that the
24 producer or seller of a homemade food product register with the
25 state or a political subdivision of the state.

26 The bill exempts from the definition of "food establishment"
27 under Code chapter 137F (food establishments and food
28 processing plants) produce stands and facilities that sell
29 homemade food items produced by a home food establishment, home
30 food establishments, and all premises where a person operates
31 a farmers market. The bill removes an exemption for premises
32 of a residence in which food that is not a time/temperature
33 control for safety food is sold for consumption off the
34 premises to a consumer customer.